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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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10/510,940

10/08/2004

Russell Heinrich

2776

7181

7590

05/22/2009

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EXAMINER

DOWE, KATHERINE MARIE

ART UNIT

PAPER NUMBER

3734

MAIL DATE

DELIVERY MODE

05/22/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

DETAILED ACTION

1. The following is in response to the amendment filed May 8, 2009 after the Final Office Action mailed March 9, 2009.
2. Claims 1-69 are currently pending, with claims 12-69 withdrawn from consideration. No claims have been amended with the response filed May 8, 2009.
3. Applicant's arguments filed May 8, 2009 have been fully considered but they are not persuasive.
4. Applicant argues Whitman does not disclose a micro-electromechanical system (MEMS) device operatively connected to the surgical instrument *for at least one of* a sensing a condition, measuring a parameter, and controlling the condition and/or parameter adjacent the end effector.
5. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., a MEMS device, wherein the device is multi-functional, multi-dimensional, and multi-operational having a plurality of capabilities related to a plurality of parameters and capable of complex functionality; a MEMS device comprising an interface that can process and/or control the surrounding environment; or a MEMS device comprising an electronic integrated system) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). The Examiner notes the pulse oximeter and tissue proximity sensors 150,152 of Whitman are capable of at least sensing a condition.

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6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to KATHERINE M. DOWE whose telephone number is (571)272-3201. The examiner can normally be reached on M-F 8:30am - 5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Todd Manahan can be reached on (571) 272-4713. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Katherine Dowe
May 20, 2009

/K. M. D./
Examiner, Art Unit 3734